

Federal Railroad Administration, DOT

§ 209.109

above apply to violations occurring on or after August 10, 2005.

[71 FR 77294, Dec. 26, 2006]

§ 209.105 Notice of probable violation.

(a) FRA, through the Chief Counsel, begins a civil penalty proceeding by serving a notice of probable violation on a person charging him or her with having violated one or more provisions of subchapter A or C of chapter I, subtitle B of this title. Appendix B to this part contains guidelines used by the chief counsel in making initial penalty assessments.

(b) A notice of probable violation issued under this section includes:

(1) A statement of the provision(s) which the respondent is believed to have violated;

(2) A statement of the factual allegations upon which the proposed civil penalty is being sought;

(3) Notice of the maximum amount of civil penalty for which the respondent may be liable;

(4) Notice of the amount of the civil penalty proposed to be assessed;

(5) A description of the manner in which the respondent should make payment of any money to the United States;

(6) A statement of the respondent's right to present written explanations, information or any materials in answer to the charges or in mitigation of the penalty; and

(7) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing.

(c) The FRA may amend the notice of probable violation at any time prior to the entry of an order assessing a civil penalty. If the amendment contains any new material allegation of fact, the respondent is given an opportunity to respond. In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$50,000 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to

and including the maximum penalty amount of \$100,000.

[42 FR 56742, Oct. 28, 1977, as amended at 61 FR 38646, July 25, 1996; 69 FR 30591, May 28, 2004; 71 FR 77295, Dec. 26, 2006]

§ 209.107 Reply.

(a) Within thirty (30) days of the service of a notice of probable violation issued under § 209.105, the respondent may—

(1) Pay as provided in § 209.109(a) and thereby close the case;

(2) Make an informal response as provided in § 209.111; or

(3) Request a hearing as provided in § 209.113.

(b) The Chief Counsel may extend the thirty (30) days period for good cause shown.

(c) Failure of the respondent to reply by taking one of the three actions described in paragraph (a) of this section within the period provided constitutes a waiver of his or her right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and to assess an appropriate civil penalty.

§ 209.109 Payment of penalty; compromise.

(a) Payment of a civil penalty may be made by certified check, money order, or credit card. Payments made by certified check or money order should be made payable to the Federal Railroad Administration and sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, P.O. Box 25082, Oklahoma City, OK 73125. Overnight express payments may be sent to DOT/FRA, Mike Monroney Aero Center, General Accounting Division, AMZ-300, 6500 South MacArthur Blvd. Headquarters Building, Room 176, Oklahoma City, OK 73169. Payment by credit card must be made via the Internet at <https://www.pay.gov/paygov/>. Instructions for online payment are found on the Web site.

(b) At any time before an order assessing a penalty is referred to the Attorney General for collection, the respondent may offer to compromise for

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a specific amount by contracting the Chief Counsel.

[42 FR 56742, Oct. 28, 1977, as amended at 71 FR 77295, Dec. 26, 2006]

§ 209.111 Informal response and assessment.

(a) If a respondent elects to make an informal response to a notice of probable violation, respondent shall submit to the Chief Counsel such written explanations, information or other materials as respondent may desire in answer to the charges or in mitigation of the proposed penalty.

(b) The respondent may include in his or her informal written response a request for a conference. Upon receipt of such a request, the Chief Counsel arranges for a conference as soon as practicable at a time and place of mutual convenience.

(c) Written explanations, information or materials, submitted by the respondent and relevant information presented during any conference held under this section are considered by the Chief Counsel in reviewing the notice of proposed violation and determining the fact of violation and the amount of any penalty to be assessed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he or she does not dismiss it in whole, he or she may issue an order assessing a civil penalty.

§ 209.113 Request for hearing.

(a) If a respondent elects to request a hearing, he or she must submit a written request to the Chief Counsel referring to the case number which appeared on the notice of the probable violation. The request must—

(1) State the name and address of the respondent and of the person signing the request if different from the respondent;

(2) State with respect to each allegation whether it is admitted or denied; and

(3) State with particularity the issues to be raised by the respondent at the hearing.

(b) After a request for hearing which complies with the requirements of

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paragraph (a) of this section, the Chief Counsel schedules a hearing for the earliest practicable date.

(c) The Chief Counsel or the hearing officer appointed under § 209.115 may grant extensions of the time of the commencement of the hearing for good cause shown.

§ 209.115 Hearing.

(a) When a hearing is requested and scheduled under § 209.113, a hearing officer designated by the Chief Counsel convenes and presides over the hearing. If requested by respondent and if practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred, or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) The presiding official may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 209.7;

(3) Adopt procedures for the submission of evidence in written form;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, and adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

(9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to civil penalties and permitted by law which may expedite the hearing or aid in the disposition of an issue raised, therein.

(c) The Chief Counsel has the burden of providing the facts alleged in the notice of proposed violation and may offer such relevant information as may be necessary fully to inform the presiding officer as to the matter concerned.

(d) The respondent may appear and be heard on his or her own behalf or through counsel of his or her choice. The respondent or his or her counsel may offer relevant information including testimony which he or she believes